Immunocept, LLC, et al v. Fulbright & Jaworski Doc. 2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
JAN 10 2006
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY ______
DEPUTY CLERK

IMMUNOCEPT, LLC, PATRICE ANNE LEE, AND JAMES REESE MATSON	§	
	§	
Plaintiffs,	§	
	§	
v.	§	CAUSE NO. A050A334 SS
	§	
FULBRIGHT & JAWORSKI, LLP,	§	
	§	
Defendant.	§	

DEFENDANT FULBRIGHT & JAWORSKI, LLP'S INITIAL DISCLOSURES PURSUANT TO FRCP 26(a)(2)

Defendant Fulbright & Jaworski, LLP ("Fulbright") respectfully submits its designation of expert witnesses pursuant to FED. R. CIV. P. 26(a)(2).

1. **John R. Kirk, Jr.**
   Jenkens & Gilchrist, A Professional Corporation
   5 Houston Center
   1401 McKinney Street
   Suite 2600
   Houston, TX 77010
   (713) 951-3300
   (713) 951-3314 fax

Mr. Kirk has been retained to testify about Fulbright's prosecution of US Patent No. 5,571,418 (the " '418 patent"), including, among other things, the standard of care that should have been exercised by a reasonable patent practitioner and Fulbright's compliance therewith. Specifically, he will discuss the amendment of the language of the '418 patent to include the transitional phrase "consisting of," as well as the justification, need, and effect of the amendment. Mr. Kirk will also testify that a reasonable patent attorney that reviewed the patent and file history would have noticed the amendment and whether the addition of "consisting of" as a transitional phrase was proper. In addition, Mr. Kirk will explain that a reasonably prudent patent attorney asked to file patent applications that build upon the '418 technology or that reference the '418 patent should have reviewed the '418 and its file history. Mr. Kirk will explain the effect of "consisting of" on the value of the '418 patent, and will provide testimony regarding Fulbright's supervision of its associates. The foregoing is a summary only. A more

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complete description of the opinions, as well as the basis therefore, the facts relied upon, and the expert qualifications, are set forth in more detail in the expert report provided to the Plaintiffs.

2. **David J. Tweardy, M.D.**
Baylor College of Medicine
One Baylor Plaza
BCM-286, Room N-1319
Houston, TX 77030
(713) 798-8918
(713) 798-8948 fax

Dr. Tweardy has been retained to testify about the evidence that the Plaintiffs' technology will be effective in the treatment of sepsis. He will testify regarding his assessment of the quality of the pre-clinical data supporting the efficacy of large pore hemofiltration, and explain drawbacks to the Plaintiffs' technology. The foregoing is a summary only. A more complete description of the opinions, as well as the basis therefore, the facts relied upon, and the expert qualifications, are set forth in more detail in the expert report provided to the Plaintiffs.

3. **Philip J. Phillips**
Becker & Associates Consulting, Inc.
2001 Pennsylvania Avenue, N.W., Suite 575
Washington, D.C. 20006
(202) 822-1850
(202) 822-1859 fax

Mr. Phillips has been retained to testify about the FDA approval process as it relates to the Plaintiffs' large pore hemofilter; specifically, Mr. Phillips will explain the data necessary and hurdles that must be crossed before the FDA would approve technology such as the Plaintiffs'. The foregoing is a summary only. A more complete description of the opinions, as well as the basis therefore, the facts relied upon, and the expert qualifications, are set forth in more detail in the expert report provided to the Plaintiffs.

4. **John A. Kellum, MD, FACP, FCCM**
5541 Hampton St.
Pittsburgh, PA 15206
(412) 361-7475

Dr. Kellum has been retained to testify as to medical and technical matters related to blood purification techniques and other treatments for sepsis/septic shock, including, among other things: (1) the potential effectiveness of Plaintiffs' large pore hemofilter in treating sepsis/septic shock in human beings; (2) the implications and shortcomings of the studies performed to date with large pore hemofilters; (3) the promise of large pore hemofiltration as compared to existing or potential alternative approaches to sepsis/septic shock treatment; (4) the current understanding of the pathophysiology of sepsis; (5) the mechanism of cytokine clearance during hemofiltration; (6) risks associated with the Plaintiffs' technology; (7) the prospects for the Plaintiffs' technology to gain FDA approval and become a viable commercialized therapy in humans; (8) the probability of the Plaintiffs' technology becoming a viable treatment for sepsis; and (9) the prospective size and expense associated with studies necessary to obtain FDA approval. The foregoing is a summary only. A more complete description of the opinions, as well as the basis therefore, the facts relied upon, and the expert qualifications, are set forth in more detail in the expert report provided to the Plaintiffs.

5. **Keith R. Ugone**
Analysis Group, Inc.
2911 Turtle Creek Boulevard, Suite 600
Dallas, TX 75219
(214) 523-1405
(214) 523-1401 fax

Dr. Ugone has been retained to testify as to the Plaintiffs' allegations of damages sustained as a result of Fulbright's alleged conduct. Dr. Ugone will comment on the assumptions, including financial assumptions, that were made by Plaintiffs' expert James Malackowski in arriving at his opinions. The foregoing is a summary only. A more complete description of the opinions, as well as the basis therefore, the facts relied upon, and the expert qualifications, are set forth in more detail in the expert report provided to the Plaintiffs.

6. **David J. Beck**
Beck, Redden & Secrest LLP
1221 McKinney St., Suite 4500
Houston, TX 77010-2010
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(713) 951-3720 fax

As a matter of law, there is no claim in the Plaintiffs' pleadings that would provide a basis for recovery of attorneys' fees. In the unlikely event that the Court permits the Plaintiffs to submit such evidence, Fulbright designates David J. Beck as a rebuttal expert.

Respectfully submitted,

By: ______________________
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ATTORNEYS FOR DEFENDANT FULBRIGHT & JAWORSKI, LLP

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served as shown below on counsel of record on January 9, 2006.

Via Facsimile and Certified Mail, Return-Receipt Certified
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